

find, it will proceed with the investigation in the usual manner.

(b) *Reliance on these guidelines.* If a respondent asserts that the action taken was pursuant to and in accordance with a plan or program which was adopted or implemented in good faith, in conformity with, and in reliance upon these Guidelines, and the self analysis and plan are in writing, the Commission will determine whether such assertion is true. If the Commission so finds, it will so state in the determination of no reasonable cause and will advise the respondent that:

(1) The Commission has found that the respondent is entitled to the protection of section 713(b)(1) of title VII; and

(2) That the determination is itself an additional written interpretation or opinion of the Commission pursuant to section 713(b)(1).

§ 1608.11 Limitations on the application of these guidelines.

(a) *No determination of adequacy of plan or program.* These Guidelines are applicable only with respect to the circumstances described in § 1608.1(d), of this part. They do not apply to, and the section 713(b)(1) defense is not available for the purpose of, determining the adequacy of an affirmative action plan or program to eliminate discrimination. Whether an employer who takes such affirmative action has done enough to remedy such discrimination will remain a question of fact in each case.

(b) *Guidelines inapplicable in absence of affirmative action.* Where an affirmative action plan or program does not exist, or where the plan or program is not the basis of the action complained of, these Guidelines are inapplicable.

(c) *Currency of plan or program.* Under section 713(b)(1), persons may rely on the plan or program only during the time when it is current. Currency is related to such factors as progress in correcting the conditions disclosed by the self analysis. The currency of the plan or program is a question of fact to be determined on a case by case basis. Programs developed under Executive Order 11246, as amended, will be deemed current in accordance with Department

of Labor regulations at 41 CFR chapter 60, or successor orders or regulations.

§ 1608.12 Equal employment opportunity plans adopted pursuant to section 717 of title VII.

If adherence to an Equal Employment Opportunity Plan, adopted pursuant to section 717 of title VII, and approved by an appropriate official of the U.S. Civil Service Commission, is the basis of a complaint filed under title VII, or is alleged to be the justification for an action under title VII, these Guidelines will apply in a manner similar to that set forth in § 1608.5. The Commission will issue regulations setting forth the procedure for processing such complaints.

PART 1610—AVAILABILITY OF RECORDS

Subpart A—Production or Disclosure Under 5 U.S.C. 552

Sec.

- 1610.1 Definitions.
- 1610.2 Statutory requirements.
- 1610.3 Purpose and scope.
- 1610.4 Public reference facilities and current index.
- 1610.5 Request for records.
- 1610.6 Records of other agencies.
- 1610.7 Where to make request; form.
- 1610.8 Authority to determine.
- 1610.9 Responses: timing.
- 1610.10 Responses: form and content.
- 1610.11 Appeals to the Legal Counsel from initial denials.
- 1610.13 Maintenance of files.
- 1610.14 Waiver of user charges.
- 1610.15 Schedule of fees and method of payment for services rendered.
- 1610.16 Payment of fees.
- 1610.17 Exemptions.
- 1610.18 Information to be disclosed.
- 1610.19 Predisclosure notification procedures for confidential commercial information.
- 1610.20 [Reserved]
- 1610.21 Annual report.

Subpart B—Production in Response to Subpoenas or Demands of Courts or Other Authorities

- 1610.30 Purpose and scope.
- 1610.32 Production prohibited unless approved by the Legal Counsel.
- 1610.34 Procedure in the event of a demand for production or disclosure.
- 1610.36 Procedure in the event of an adverse ruling.